



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, MNSD, RR, O

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 1 Month Notice to End Tenancy for Cause; allowing them more time in which to make that application; returning the security deposit to the them; and allowing the tenants to reduce past or future rent for repairs, services or facilities agreed upon but not provided. In their written material the tenants also asked for a repair order. Both parties appeared and had an opportunity to be heard.

By the date of the hearing the tenants had moved out of the rental unit. As a result, the applications regarding the 1 Month Notice to End Tenancy and repairs are irrelevant.

I dismissed the tenants' claim for return of the security deposit with leave to re-apply as the tenants did not move out of the rental unit until the end of December and had not yet provided their forwarding address in writing to the landlord. I explained the relevant portions of section 38 of the *Residential Tenancy Act* to the parties and made it clear that this hearing was only about the tenants' claim for compensation; not any claims the landlord may have against the tenants.

At several points in the hearing the landlord asked for an adjournment so that a witness could appear on his behalf. After hearing all of the tenants' and landlord's evidence I declined the landlord's request on the grounds that the evidence that the witness was expected to provide was irrelevant to the issues before me in this hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence

The rental unit is a two level, half duplex. There are four bedrooms and two bathrooms. The tenants estimated the home to be about 1500 square feet. The landlord was not able to say when the duplex was built but described it as very old.

The parties agree that there was a written tenancy agreement although neither party filed a copy of it. The tenants moved in on April 25, 2014 but were not required to pay rent until May 1. A move-in inspection was conducted and a move-in condition inspection report completed. The tenancy was a month-to-month tenancy. The monthly rent of \$1000.00, not including utilities, was due on the first day of the month. The tenants paid a security deposit of \$500.00.

The move-in condition inspection reveals that the dining room window was cracked, the master bedroom window was cracked/broken, the entrance door needed weather stripping, and shower needed new silicone. The rest of the deficiencies noted were primarily scuffs on the paint.

In his oral testimony the male tenant said the problem with the master bedroom window was that one pane of the storm window was missing and the plastic edging between the windows was missing. The tenants also testified that a friend of their had lived in this unit before them and she had told them that she had had problems with the furnace the previous winter.

The tenants say they agreed to rent this unit because the landlord promised to fix the furnace, the two broken upstairs windows, replace the four basement windows (which were intact but could not be locked), and to make some other repairs. The landlord testified that he promised to upgrade the unit as he could but he did not promise to make repairs.

The tenants say they provided the landlord with a written list of the required repairs at the beginning of May again at the beginning of June. Throughout their tenancy they called and texted the landlord frequently about the repairs they wanted but he did very little.

At some point the landlord brought over four new windows for the basement. He installed two; the other two are still at the rental unit. The landlord says the tenant agreed to install the other two; the tenant says he told the landlord he did not have the proper tools.

The tenants say that when they tried to turn on the furnace at the end of September they found it did not work properly. They reported the problem to the landlord but got no response.

The tenants withheld \$300.00 from the October rent because the repairs had not been made. They withheld \$300.00 from the November rent for the same reason. Their submission is that the landlord agreed to this deduction. The landlord's testimony did not indicate any agreement.

On November 14 the tenants called the landlord to tell him that the furnace had quit working. The landlord sent his handyman over, who got it working.

On November 21, in the middle of a four day cold snap, the furnace quit working. The tenants called the landlord who did not respond very positively. According to the tenants' written material, this conversation occurred around 2:00 am. Later that morning the landlord brought his handyman over – who was able to get the furnace going – and several electric heaters (the tenant said four; the landlord said five.).

The tenants continued to have trouble with the furnace. The handyman came on November 21, 22, 24, 25, 27, 28 and 29. On each occasion he was able to get the furnace going. By the 29th they figured out that if the thermostat was kept at 27 degrees the furnace would not shut off however as the tenants were paying for the gas they were not very happy with this solution.

On November 29 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause. The effective date of the notice was December 31, 2014. The tenants found a new place and started moving out December 10 or 11. December 12 was the last night they slept in the rental unit. It took them until the end of the month to finish moving and the landlord obtained the keys on January 1, 2015.

The tenant did not pay any rent for December. The tenant testified that the landlord told them to keep the rent; an assertion denied by the landlord.

The landlord testified that the furnace is a two year old, high efficiency furnace. He thinks it is still on warranty. When the tenants called him about the furnace he told them to use the rent they had withheld to stay in a hotel or to pay for a service call. He has not had the furnace inspected since the obtaining possession of the rental unit.

The tenant said he was told by the handyman that the sensors that turn on and shut off the furnace need to be replaced.

The male tenant testified that when he rented the unit the landlord agreed to keep the gas bill in his name until the furnace was fixed. The landlord says he told the tenant he had to have the bill transferred to his name by June 1. The gas service was cut off on

November 18 and the tenant had to pay a \$90.00 reconnection fee. This fee is not refundable. The tenants claim return of this payment from the landlord.

The tenants claim a rent reduction in the amount of \$300.00 per month for the period May 1 to September 30 because the rental unit was never repaired as promised by the landlord.

Analysis

Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent.

The tenants had no right to withhold any portion of the rent without an order from the Residential Tenancy Branch allowing them to do so. Having heard the parties I do not believe that this landlord would ever have agreed that a tenant could withhold any portion of a month's rent, let alone an entire month's rent.

The only evidence as to whether the landlord promised to repair/replace the two upstairs windows and the four basement windows as part of the tenancy agreement is the contradictory oral testimony of the parties. On any application the burden of proof falls on the applicant to prove their claim on a balance of probabilities. When the only evidence is the contradictory oral testimony of the parties, there is no additional evidence to tip the balance of probabilities in the applicant's favour. Accordingly, no financial compensation will be awarded to the tenants for the landlord's alleged failure to comply with the terms of the tenancy agreement.

It is the same situation regarding the tenants' claim for reimbursement of the hook-up fee paid to the gas company. The tenants were ultimately responsible for the gas bill. As to whether the landlord had agreed to some other arrangement pending the repair of the furnace the only evidence is the conflicting oral testimony of the parties. Accordingly, the claim for reimbursement of the \$90.00 is dismissed.

Section 32(1) of the *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- complies with the health, safety and housing standards required by law; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Although no independent explanation for the furnaces ongoing problems was provided the evidence is that the furnace kept shutting off during a very cold time of year. The landlord did attempt to address the situation by having his handyman attend frequently and by providing portable electric heaters. However, a working furnace is one of the services provided in this tenancy agreement and the value of the tenancy was reduced by its failure to work properly.

According to the tenants' evidence the furnace was a continuous problem from November 21 until they moved out on December 12; a total of 22 days. The broken upstairs windows would have contributed to the lack of comfort in the home during this period. I find that the value of the tenancy was reduced by 15% and award the tenants damages in the amount of \$150.00.. As the tenants have withheld more than \$150.00 from the rent already paid, a monetary order will not be granted.

The tenants did not pay a fee to file this application so no further order is required.

Conclusion

I find that the value of the tenancy was reduced by 15% and award the tenants damages in this amount. As the tenants have withheld more than \$150.00 from the rent already paid, a monetary order will not be granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 07, 2015

Residential Tenancy Branch

